

# The Selves and the Shoemaker: Psychopaths, Moral Judgement, and Responsibility

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**ABSTRACT:** David Shoemaker argues from (A) psychopaths' emotional deficiency, to (B) their insensitivity to moral reasons, to (C) their lack of criminal responsibility. This response observes three important ambiguities in this argument, involving the interpretation of (1) psychopaths' emotional deficit, (2) their insensitivity to reasons, and (3) their moral judgements. Resolving these ambiguities presents Shoemaker with a dilemma: his argument either equivocates or it is falsified by the empirical evidence. An alternative perspective on psychopaths' moral and criminal responsibility is proposed.

Much in David Shoemaker's rich and provocative article (this volume) seems exactly right. I'm convinced by his demolition of the moral/conventional distinction and his observations about the authority-dependence of some moral reasons. But I have doubts about his diagnosis of the moral judgements of psychopaths and the conclusions he draws from it. I first highlight some ambiguities he has left unresolved, and show that they conceal a dilemma. Then I sketch a contrary view on psychopaths' criminal and moral responsibility.

## 1. Three Ambiguities

Broadly, Shoemaker argues from (A) psychopaths' *emotional deficiency*, to (B) their *insensitivity to moral reasons*, to (C) their *lack of moral responsibility*.<sup>1</sup> My concern is with three ambiguities. I see no way of resolving these on which his argument is both valid and plausible, at once avoiding equivocation and fitting the psychological evidence (from Blair 1995) he seeks to accommodate. I'll start by identifying two of these ambiguities; we'll encounter the third later.

The first ambiguity concerns the nature of psychopaths' emotional deficiency. Does psychopathy involve a deficit merely in *feeling* (or sharing) others' emotions, or does it involve a deficit additionally in *understanding* others' emotions?

**Feeling Deficit:** psychopaths are deficient merely in feeling others' emotions.

**Understanding Deficit:** psychopaths are deficient also in understanding others' emotions.

The second ambiguity involves the sense in which psychopaths are claimed to be 'insensitive to moral reasons'. We can distinguish two broad ways of interpreting this;

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<sup>1</sup> Shoemaker's position is more nuanced since he limits his claims to *some kinds* of moral reasons and moral responsibility, but for economy I'll omit these qualifications.

**Conative Insensitivity:** psychopaths fail merely to be motivated by moral reasons.

**Cognitive Insensitivity:** psychopaths fail also to be aware of moral reasons.

A cognitive insensitivity to reasons could take two different forms, either *nonnormative* or *normative* unawareness. Suppose that  $p$  is a moral reason for S to  $\varphi$ ; either (i) S could be unaware that  $p$ , or (ii) S could be unaware merely that  $p$  is a moral reason for him to  $\varphi$ . For example, a psychopath could fail to realize that somebody does not consent to some treatment, or while knowing it he could fail to realize that it is a reason not to treat her like that.

While it is unclear which interpretation of psychopaths' insensitivity to reasons Shoemaker favours, he explicitly attributes to them a mere feeling deficit rather than an understanding deficit—or, in his terms, a lack of 'identifying' rather than of 'detached' empathy. As David Hume might have put it, the psychopath differs from us empathically in that in his mind the idea of another's passion is not enlivened into a corresponding passion.

The choice of this disambiguation of (A) presents Shoemaker with a dilemma when we have to decide between conative insensitivity and cognitive insensitivity readings of (B):

*Horn 1:* Much of Shoemaker's language suggests he has in mind a cognitive insensitivity; he writes that psychopaths are 'blind' to and fail to 'recognize' moral reasons, and that they 'fail to track' moral distinctions. Attributing this kind of insensitivity to psychopaths would plausibly support the inference from (B) to (C), from insensitivity to moral reasons to a lack of moral responsibility. It also seems faithful to the psychological evidence Shoemaker considers, like the psychopath's apparent inability to identify the reasons for which certain acts are morally wrong. *However* in order to validate the inference from (A) to (B) Shoemaker needs this insensitivity to be of a kind that follows from the nature of the psychopath's emotional deficiency, which he claims is 'perfectly sufficient to explain his insensitivity to second-person reasons'. But if the psychopath has a normal capacity to understand the emotions of others, then how could he fail to be aware of the emotion-based reasons that underlie others' moral judgements? A mere feeling deficit does not seem sufficient to explain a cognitive insensitivity to moral reasons.

*Horn 2:* A mere feeling deficit does seem perfectly sufficient to explain a conative insensitivity, on the other hand. If psychopaths fail to be emotionally affected by their recognition of others' emotions, then it will be no surprise if their recognition of emotion-based reasons leaves them cold. So this seems to be the interpretation Shoemaker requires. However this horn of the dilemma has problems too. First, a mere conative insensitivity to moral reasons might not be sufficient to undermine a psychopath's moral responsibility; i.e. the inference from (B) to (C) is weakened. It seems too easy to escape being blameworthy if you need only be left cold by your awareness of your moral reasons. I won't dwell on this objection, however, since Shoemaker's embrace of Stephen Darwall's claims linking moral responsibility with the capacity to 'accept' and 'act' on second-personal reasons suggests that here we may have a case of conflicting intuitions. Rather I will focus on the problem that a mere conative insensitivity seems not to do justice to the evidence that Shoemaker considers, that psychopaths exhibit a lack of competence in moral

judgement.<sup>2</sup> According to this evidence their moral judgements track normal people's only imperfectly, and they often fail to identify the real right- or wrong-making reasons, appealing simply to 'the rules'. Apparently psychopaths are not simply indifferent to moral reasons, but often are unconscious of them.

I can see one possible way out of this dilemma for Shoemaker, which turns on what it is to 'recognize' a reason. The idea is to challenge the line drawn above between conative and cognitive sensitivity to reasons. I said that to be 'aware' of  $p$  as a reason is simply to know that  $p$  and that  $p$  stands in a reason-relation  $R$  to some action. On this view, to 'recognize' a reason is purely a matter of being in a certain kind of belief-state, and doesn't by itself involve any conative attitude or motivational disposition. On a common rival view, however, to 'recognize' or 'accept' that  $p$  is a reason is at least partly to be in some kind of conative or motivational state. Call this an *expressivist* theory of reasons-recognition. So when we say that psychopaths fail to 'recognize' moral reasons, or are 'blind' or 'insensitive' to them, we are not saying that they are ignorant of some facts in the world, but rather that in their practical reasoning about what to do they fail to weigh certain kinds of facts in favour of certain actions. This strategy separates the two kinds of insensitivity I labelled 'cognitive', and reinterprets normative unawareness as *conative* insensitivity, albeit of a kind we describe as if it were a cognitive failure. This provides a way of blunting the second horn of the dilemma, reconciling a mere feeling deficit with the appearance that the psychopath suffers from a cognitive kind of insensitivity.

However this solution makes salient the third of our three ambiguities, which involves the sense in which the psychopaths in these studies are making 'moral judgements'. While there are many possible interpretations of what psychopaths are doing in these studies, these can be separated into two broad categories based on whether the psychopaths' responses are guided by their own judgements about reasons or whether they are somehow deferring to the normative perspectives of normal people:

**Deferential Judgements:** psychopaths' judgements of moral right and wrong defer to normal people's normative perspectives on reasons.

**Nondeferential Judgements:** psychopaths' judgements of moral right and wrong are based on their own normative perspectives on reasons.

Psychopaths' judgements would be deferential if they are merely trying to mimic normal people's moral judgements, or if they are trying to describe or defer to normal people's moral point of view. If their judgements are nondeferential then they are performing the same *kinds* of judgements as normal people, and any difference in those judgements' contents will be due to psychopaths' abnormality in what things they treat as reasons, or weigh towards action in their deliberations.

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<sup>2</sup> This evidence is challenged by Schaich Borg & Sinnott-Armstrong (ms), who conclude from a survey of extant studies of psychopaths that there is no conclusive evidence of this kind of moral incompetence. Here I follow Shoemaker and assume that these differences do exist.

Reinterpreting the distinction between conative and cognitive insensitivity to reasons in this way can only help Shoemaker on the hypothesis that psychopaths are making nondeferential judgements. If psychopaths have a normal capacity to understand other people's emotions—i.e. a mere feeling deficit, as Shoemaker maintains—then they should be able to identify which emotion-based considerations other people accept as the reasons for which they judge things morally right or wrong. Therefore this expressivist interpretation does not help to explain abnormalities in psychopaths' moral judgements on the hypothesis that psychopaths are making deferential judgements, given that they have merely a feeling deficit and so a normal ability to understand others' emotions. If psychopaths both understand the emotions of normal people and are deferring to normal people in their moral judgements, then we would expect their performance to be largely indistinguishable from that of normal people. But according to the evidence Shoemaker is trying to accommodate and explain, psychopaths rather make significantly diverging judgements, and even where they do not, they commonly offer divergent rationales for those judgements.

Given that psychopaths are abnormal in how they weigh facts towards action, we could expect them to provide abnormal judgements and rationales if they were rather basing their moral judgements on what they themselves 'recognize' as reasons for action. Hence, the solution for Shoemaker may be to attribute to psychopaths the combination of (i) a mere feeling deficit, (ii) an (expressivistic) conative insensitivity, and (iii) nondeferential judgements. Unfortunately however it is implausible that psychopaths are making nondeferential judgements. The evidence tells us that the contents of their 'moral judgements' diverge at most in small ways from those of normal people. Yet it is obvious from their behaviour that they do not themselves give (e.g.) the common good or other people's welfare any weight in their own practical deliberations. And while they often cite 'the rules' as the grounds for their moral judgements, they obviously do not give 'the rules' any weight in their own deliberations. Moreover we know that their behaviour in general bears little correspondence to their 'moral judgements'. We have to conclude that psychopaths' judgements are deferential, which closes off the expressivist way of escaping the dilemma.

The source of Shoemaker's dilemma seems to be his choice to attribute psychopaths a mere feeling deficit rather than an understanding deficit.<sup>3</sup> The evidence strongly suggests that psychopaths are making deferential judgements, and given that they are abnormal both in their judgements and in their rationales the right view seems to be the attribution of a genuine cognitive insensitivity. Psychopaths fail to recognize some moral reasons, either because they are unaware of the facts altogether, or because they are unaware of the normative relations those facts bear to action. I have suggested that this combination of theses cannot plausibly be combined with the thesis of a mere feeling deficit. However it is a natural fit with an understanding deficit. Because

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<sup>3</sup> This distinction may be too simplistic, and we might seek to distinguish two different kinds of 'understanding deficit'. Perhaps psychopaths can identify others' emotions in the same weak sense that the congenitally blind can identify the colours of various kinds of objects (the sky is blue, grass is green, etc.), but similarly lack understanding of what it is *like* to experience them (e.g. Kiehl 2008a: 134). This latter kind of deficit might arguably be sufficient to explain a cognitive insensitivity to emotion-based reasons. In correspondence, Shoemaker endorses this way of interpreting psychopaths' *feeling* deficit; it is also suggested by the robot analogy in his paper. However, I think it is important to realize that this would be a genuine kind of deficit in *understanding* others' emotions, and it would be misleading to describe it as a failure merely to share or identify with those emotions. I can know exactly what it is like for another person to have a certain emotion, without emotionally identifying or empathizing with them.

psychopaths often don't understand ordinary people's emotions they often fail to recognize the reasons that are grounded in those emotions. Therefore, when they try to make moral judgements in deference to the normative perspective of ordinary people they often go wrong, and even when they are right they are often unable to identify the appropriate grounds for those judgements.

Shoemaker claims that the evidence points rather towards a mere feeling deficit. But the only supporting evidence he offers is the case of Sam Vaknin, the subject of the documentary *I, Psychopath*, who reportedly can give clinical analyses of others' feelings. Even if this is interpretation is accurate, Vaknin might be exceptional. An incapacity to experience a range of emotional reactions would explain a general tendency in psychopaths to fail to understand other people's emotions, but it wouldn't preclude the possibility that an intelligent, observant, and curious psychopath could acquire expertise on this topic through indirect means. It would be useful to know whether Vaknin shares the lack of competence in moral judgement found to be typical in psychopaths, but we don't have this information. Moreover, Shoemaker neglects one significant piece of data: psychologists report finding that psychopaths generally perform poorly at some emotional recognition tasks (e.g. Kiehl 2008a: 134). The weight of evidence seems to favour an understanding deficit over a mere feeling deficit.

## 2. Criminal & Moral Responsibility

I'll end with some suggestions about criminal and moral responsibility. Shoemaker argues against the orthodox view that psychopaths are criminally responsible as a consequence of being moral responsible, and proposes instead that they may be criminally responsible though not morally responsible. Perhaps this is right, but for the sake of being contrary I'll briefly sketch an argument to the opposite and so-far unchampioned conclusion, that psychopaths might have moral responsibility but not criminal responsibility.

Shoemaker claims that psychopaths can meet the status requirement for criminal responsibility even if they are unable to recognize moral reasons (and thereby meet a requirement for moral responsibility), because they are still capable of recognizing other kinds of reasons for complying with the law, like prudential reasons. After all, they appear not to have too much difficulty identifying 'the rules'. I'm not so sure, however. A further piece of information we have about psychopaths is that in addition to their deficits in empathy and other social emotions they also manifest deficits in fear and other self-regarding emotions (e.g. Kiehl 2008a: 128, 136-7). In addition to inconsiderate and callous behaviour, they have a tendency towards impulsive and imprudent behaviour. Presumably these two kinds of deficits are connected in some way, and I think philosophers can hazard a guess as to how. It has long been noted in philosophy that egoistic skepticism about the authority of reasons based on the interests of other selves is structurally similar to skepticism about the authority of reasons based on the interests of one's own future self.<sup>4</sup> 'Why should *I* care about *them*?' has much the same force as 'Why should *I now* care about my *future* self?'

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<sup>4</sup> E.g. Nagel 1970, Parfit 1984.

In both cases we normally just do care, irresistibly, but it is hard to know what can be said to the person who doesn't.

It is plausible that altruism and prudence as emotional dispositions both depend on an ability to vividly imagine how a person would feel under various absent circumstances, and that this ability is lacking in the psychopath. If this is so, we can expect that the psychopath's understanding deficit will retard his sensitivity to prudential reasons in much the same way—even if to a lesser degree—that it retards his sensitivity to moral reasons.<sup>5</sup> This gives us reason to doubt Shoemaker's claim that psychopaths are sufficiently responsive to sanction-based reasons to meet the conditions for criminal responsibility. Relevantly, psychopaths have a strong tendency towards criminal behaviour. At least one psychologist who has worked extensively with psychopaths suggests that any psychopath who has not been incarcerated has simply never been caught; all will have committed criminal acts in spite of the sanctions of law (Kiehl 2008b: 166). This supports the hypothesis that psychopaths are indeed deficient in their sensitivity to prudential reasons. Shoemaker's argument for psychopaths' eligibility for criminal responsibility is therefore suspect. We may additionally have here the makings of an argument *against* criminal responsibility. Suppose we understand criminal responsibility as a matter of being an appropriate recipient of criminal sanction.<sup>6</sup> If psychopaths inevitably engage in criminal activity, then, given that no psychopath ever had it in their power not to be a psychopath, it follows that no psychopath ever had it in their power to avoid all criminal activity. But arguably it is unjust, and hence inappropriate, to punish agents for activity that they never had it in their power to avoid.<sup>7</sup>

Many would suppose that a psychological incapacity to abstain from some form of activity would block responsibility of the moral kind as well. But on a more compatibilist and less metaphysically fragile view this inference can be resisted. One view of this kind maintains that to be morally responsible for a wrongful act it is sufficient that the agent intentionally performed the act despite (i) knowing the facts on the basis of which it was wrong, and (ii) lacking any exculpatory false beliefs. Here moral responsibility amounts to being blameworthy for the action in the sense that it was a direct causal consequence of having a *bad character*, constituted by motivational indifference to reasons of that kind. Do psychopaths meet this condition? In some cases they may lack awareness of the relevant reasons due to their deficit in understanding emotions; this would be exculpatory. But in other cases it is plausible that they are aware of the relevant facts, and merely fail to be moved by them or to weigh them towards/against action. Here they would meet the proposed condition for moral responsibility.

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<sup>5</sup> I doubt that psychopaths are imprudent to the same degree that they are uncompassionate, since it is presumably easier to imagine the emotions of one's own future self than those of others. But it should be enough for this objection if their emotional imagination of their future feelings is less vivid and accurate than ours, so that (e.g.) it is often insufficiently strong to counteract a violent passion.

<sup>6</sup> However, criminal responsibility is plausibly best interpreted as *attributibility* of crime rather than *accountability* for crime. In correspondence Shoemaker expresses agreement with my observations as applied to psychopaths' accountability.

<sup>7</sup> This is not to deny that there are very good reasons to *institutionalize* psychopaths, of course. A problem for the argument I've sketched is that people are held criminally accountable for *particular* crimes rather than for a general pattern of criminal activity, and plausibly the psychopath's inability to avoid criminal activity per se does not signify an inability to avoid any particular instance of criminal activity. However, it may be enough if psychopaths commit their crimes in circumstances where, due to their condition, knowledge of the criminal sanction alone is not sufficient to enable them to avoid committing the crime.

The crux of this asymmetry would be that while criminal responsibility entails the appropriateness of being the object of criminal punishment, moral responsibility entails merely the appropriateness of being the object of judgements of moral wrongdoing. While it is unjust to punish an agent for activities which he did not have it in his power to avoid, it is not similarly unjust to evaluate his character negatively on the basis of the same activities.

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